Supreme Court, U.S.
FILED
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(4)

No. 02-403

In the Supreme Court of the United States

FEDERAL ELECTION COMMISSION, PETITIONER

v.

CHRISTINE BEAUMONT, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: OCT. 17, 2002
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38 pp

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Court of Appeals Docket Nos. 01-1348 and 01-1479

CHRISTINE BEAUMONT, ET AL.,
PLAINTIFFS-APPELLEES

v.

FEDERAL ELECTION COMMISSION,
DEFENDANT-APPELLANT

RELEVANT DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
1/25/02		Published, authored opinion filed with dissent. [01-1348, 01-1479] (bhr) [01-1348 01-1479]
1/25/02		Judgment order filed. Decision: affirmed. EOD Date: 1/25/02. [01-1348, 01-1479] (bhr) [01-1348 01-1479]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
5/16/02		COURT ORDER filed [3588452] denying motion for rehearing [3550827-1] EOD Date: 5/16/02. In 01-1348, 01-1479, denying motion for rehearing en banc [3550827-2] EOD Date: 5/16/02. in 01-1348, 01-1479 Copies to all counsel. [01-1348, 01-1479] (bhr) [01-1348 01-1479]

* * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

Civil Docket No. 00-CV-2

CHRISTINE BEAUMONT, LORETTA THOMPSON, STACY THOMPSON, BARBARA HOLT, NORTH CAROLINA RIGHT TO LIFE, INC., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
1/3/00	1	Verified Complaint filed re: campaign contributions in federal elections/to federal candidates. w/attach. (js)
3/3/00	7	Motion by Christine Beaumont, Loretta Thompson Stacy Thompson, Barbara Holt, North Carolina Rights for summary judgment ORAL ARGUMENT REQUESTED. (js) [Entry date 03/05/00]

DATE	DOCKET NUMBER	PROCEEDINGS
3/17/00	9	Motion by Federal Election to dismiss pltfs.' complaint in part, for partial summary judgment (js) [Entry date 03/18/00]
10/4/00	14	Order denying [9-1] motion to dismiss pltfs.' complaint in part, denying [9-2] motion for partial summary judgment, granting [7-1] motion for summary judgment signed by Terrence W. Boyle, USDJ. The effect of this ruling is STAYED until the final order has been issued by the Court. The Court will award appropriate declaratory and injunctive relief at that time. OB Ref: BO # 16, p. 58; served 10/30/00 via fax on 10/300 and via U.S. Mail on 10/4/00. (sat)
10/26/00	19	Order granting [16-1] motion for temporary restraining order signed by Terrence W. Boyle,

DATE	DOCKET NUMBER	PROCEEDINGS
		USDJ. Pending a final order of the Court, Defendants are hereby ENJOINED from relying on, enforcing or prosecuting violations of the sections 2 U.S.C. Section 441(b) and 11 C.F.R. Sections 114.2(b) and 114.10 as against Plaintiffs, and from relying on, enforcing or prosecuting violations of any other statutory provision whose obligations and restrictions reasonably flow from the aforementioned provisions. OB Ref: BO #16, p. 106; served via fax. (sat)
1/24/01	23	Order signed by Terrence W. Boyle, USDJ. Defendants are permanently ENJOINED from relying on, enforcing or prosecuting violations of sections 2 U.S.C. Section 441(b) and 11 C.F.R. Sections 114.2(b) and 114.10 as against Plaintiffs, and from relying on, enforcing or prosecuting violations of any

DATE	DOCKET NUMBER	PROCEEDINGS
		other statutory provision whose obligations and restrictions reasonably flow from the aforementioned provision. OB Ref: BO # 16, p. 233; served. (sat)
1/24/01	24	Judgment for North Carolina Right, Barbara Holt, Stacy Thompson, Loretta Thompson, Christine Beaumont against Federal Election signed by Sue A. Towe, Deputy Clerk. Defendants are permanently ENJOINED from relying on, enforcing or prosecuting violations of sections 2 U.S.C. Section 441(b) and 11 C.F.R. Sections 114.2 (b) and 114.10 as against Plaintiffs, and from relying on, enforcing or prosecuting violations of any other statutory provision whose obligations and restrictions reasonably flow from the aforementioned provisions. Served. OB Ref: BO # 16, p. 235 (sat)
3/6/01	26	Notice of appeal by Federal Election (rp) [Entry date 03/08/01]

DATE	DOCKET NUMBER	PROCEEDINGS
3/16/01	27	Notice of cross-appeal by North Carolina Right. Barbara Holt, Stacy Thompson, Loretta Thompson, Christine Beaumont (rp) [Entry date 03/27/01]

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

Case Number: 2:00-CV-2-BO(2)

CHRISTINE BEAUMONT, ET AL.

v.

FEDERAL ELECTION COMMISSION, DEFENDANT

[Filed: Jan. 10, 2000]

SUMMONS IN A CIVIL ACTION

TO: (Name and Address of Defendant)
Lawrence Nobel
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

Plaintiff's Attorney (Name and address)

Paul Stam, Jr.
Stam, Fordham & Danchi, P.A.
106 Holleman Street
P.O. Box 1600
Apex NC 27502-1600

James Bopp, Jr.
James R. Mason, III
Bopp, Coleson & Bostrom
1 South Sixth Street
Terre Haute, IN 47807-3510

an answer to the complaint which is herewith served upon you, within sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/ DAVID DANIEL — 1-8-00
CLERK — DATE

/s/ REBECCA BOWEN
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

Case Number: 2:00-CV-2-BO(2)

CHRISTINE BEAUMONT, LORETTA THOMPSON, STACY THOMPSON, BARBARA HOLT AND NORTH CAROLINA RIGHT TO LIFE, INC., PLAINTIFFS

v.

FEDERAL ELECTION COMMISSION, DEFENDANTS

[Filed: Jan. 3, 2000]

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Christine Beaumont, Loretta Thompson, Stacy Thompson, Barbara Holt and North Carolina Right to Life, Inc. ("NCRL"), by counsel and for their Verified Complaint, state the following:

I. Introduction

1. This is a civil action for declaratory and injunctive relief arising under the Constitution of the United States. North Carolina Right to Life, Inc., a non-profit, ideological North Carolina corporation, and its offers and board members, challenge 2 U.S.C. § 441b(a), which bans corporations from making contributions or expenditures in connection with federal elections, and two FEC regulations, 11 C.F.R. § 114.2(b), which prohibits all corporations from making campaign contributions to federal candidates, and 11 C.F.R. § 114.10, which purports to create an exemption allowing certain non-

profit corporations to make independent expenditures, but which exemption is unconstitutionally too narrow, and would not include NCRL. If it were lawful to do so, NCRL would make contributions and independent expenditures in the months preceding the year 2000 federal elections. However, because it would be a crime for it to do so, NCRL will refrain from pursuing its protected First Amendment rights of association and free speech in the absence of the judicial relief it seeks in this complaint.

II. Jurisdiction and Venue

2. This action arises under the Constitution and laws of the United States. This Court has jurisdiction under 28 U.S.C. § 1331 (jurisdiction established for federal constitutional questions), 28 U.S.C. § 2201 (providing for declaratory judgment) and 28 U.S.C. § 2202 (providing for further relief based on declaratory judgment). The authority of this court to declare void, *ultra vires*, and/or unconstitutional actions of the Federal Election Commission is granted by 5 U.S.C. § 706 (Administrative Procedure Act).

3. Venue in this district is proper pursuant to 28 U.S.C. § 1391(e)(4). The defendant is an agency of the United States, and plaintiffs Christine Beaumont, Loretta Thompson and Stacy Thompson reside in the District.

III. Parties

4. Plaintiff Christine Beaumont is an adult citizen of the United States and a resident of North Carolina. She is eligible to vote in any election for President of the United States. Christine Beaumont resides in Shawboro, North Carolina. She is not a member of NCRL.

5. Plaintiff Loretta Thompson is Vice President of NCRL's Board of Directors and is on the Executive Committee of the Board of Directors. She is eligible to vote in any election for President of the United States and resides in Knightdale, North Carolina.

6. Plaintiff Stacy Thompson is a Member of the Board of Directors and is on the Executive Committee of the Board of Directors. He is eligible to vote in any election for President of the United States and resides in Knightdale, North Carolina.

7. Plaintiff Barbara Holt is President of NCRL's Board of Directors and is on the Executive Committee of the Board of Directors. She is eligible to vote in any election for President of the United States and she resides in Elon College, North Carolina.

8. NCRL is a non-profit, ideological corporation, incorporated in the State of North Carolina. NCRL's principle office is in Greensboro, North Carolina.

9. Defendant Federal Election Commission ("Commission" or "FEC") is an agency of the United States of America and is charged with administering and enforcing the Federal Election Campaign Act of 1971, *as amended*, 2 U.S.C. § 431 *et seq.* ("FECA").

IV. Facts

A. NCRL's Organizational Structure and Purposes

10. NCRL is a non-profit, ideological North Carolina corporation and is exempt from federal income tax under § 501(c)(4) of the Internal Revenue Code (codified at 26 U.S.C.).

11. NCRL was not established by a business corporation or a labor union, and it has no shareholders or

other persons affiliated with it who have a claim on it assets or earnings.

12. NCRL's organizational purposes are set forth in its Articles of Incorporation. They are:

> (1) Being a non-profit, non-sectarian, public service organization dedicated to protecting and fostering the most basic value of our society–life itself; . . . We advocate positive action to improve human life, and oppose whatever is destructive or detrimental to human life at any stage of development, age or condition. We are especially mindful of the unborn, the aged, the impoverished, the impaired, the incompetent, and all those otherwise weak, disadvantaged or defenseless. Our purpose is to gather and disseminate, by all means of communications, accurate up-to-date information on the subjects of abortion, euthanasia, and other life destroying techniques, and their effects on the victim, the family, the community, and on the health care profession and society at large; and to further work for pro-life alternatives to abortion and humane solutions to the problems of women who seek abortions; said alternatives being counseling, organizing and carrying out educational programs; to foster and encourage public health programs; to assist in the placing for adoption children of all races and those with handicaps; to assist in the establishment of a comprehensive medical, social and recreational care program for unwed mothers; and to promote anti-poverty programs through job training and child care centers, specifically directed toward the family unit. (2) To make donations for the public welfare, or for religious, charitable, scientific or educational purposes.

Articles Of Incorporation, attached hereto as Exhibit A.

13. NCRL engages in various charitable activities, such as, referring women involved in crisis pregnancies to organizations that can assist them. NCRL cooperates with, publicizes and promotes numerous service groups that provide alternatives to abortion and post-abortion counseling. NCRL intends to continue to engage in such charitable activities.

14. No part of the net earnings of NCRL inures to the benefit of any private shareholder or individual. Except for reasonable compensation for services rendered to the corporation, NCRL does not afford any pecuniary gains to its members, directors, officers or any other persons. NCRL has no capital stock.

15. NCRL is not affiliated with any political candidate, political party, or campaign committee.

16. It is not NCRL's major purpose to nominate, elect, or defeat federal or state candidates.

B. NCRL's Sources of Revenue

17. NCRL is overwhelmingly funded by private contributions from individuals.

18. NCRL has no policy, written or otherwise, against accepting contributions from business corporations or labor unions.

19. NCRL has accepted contributions from business corporations into its general fund. However, the amount of annual contributions it receives from business corporations is not significant in relation to the total contributions it receives from individuals during the year. For example, such corporate contributions

amounted to 2.44% in 1996, 3.57% in 1997 and 3.63% in 1998.

20. The total corporate contributions listed in paragraph 19, above, were due almost exclusively to income received from Amerivision, Inc., under a program where the long distance company returns 10% of its customers' long distance charges to the not-for-profit corporations its customers designate. Thus, these monies are in reality individual contributions given to NCRL, via Amerivision, as a result of the individuals agreeing with the ideological and political goals of NCRL.

21. In 1996, two corporations made contributions to NCRL. Amerivision accounted for $3,723.15 out of a total of $3,773.15 in contributions from corporations.

22. In 1997, five corporations made contributions to NCRL. Amerivision accounted for $5,262.99 out of a total of $5,537.99 in contributions from corporations.

23. In 1998, eight corporations made contributions to NCRL. Amerivision accounted for $4,061.91 out of a total of $4,296.91 in contributions from corporations.

24. NCRL has not accepted any contributions from labor unions into its general fund.

25. NCRL has engaged in traditional fundraising activities of not-for-profit corporations, such as walk-a-thons and raffles, and engages in minor business activities incidental and related to its advocacy of issues, such as receiving special event revenue from the price of admission to its conventions and revenue from distributing pro-life literature. The annual revenue generated from such activities is negligible in relation to the total revenue NCRL generates each year.

C. NCRL's Use of Its Funds

26. To further its general purposes NCRL has spent money for issue advocacy communications and publications such as its newsletter, candidate surveys and voter guides. It intends to do so in the future.

27. NCRL has made lawful contributions to candidates for state office and has lawfully made independent express advocacy communications advocating the nomination, election or defeat of state candidates. It intends to do so in the future.

28. Making contributions to state candidates and expressly advocating on behalf of state candidates is not now nor will it ever be NCRL's major purpose, either as expressed in its organizational documents or as measured by its disbursements.

29. NCRL has never made contributions to candidates for federal office and it has not made independent expenditures advocating the nomination, election or defeat of candidates for federal office.

30. If it were lawful for it to do so, NCRL would contribute $1,000 or less to at least one federal candidate before the year 2000 general election, and before future federal elections.

31. If it were lawful for it to do so, NCRL would spend more than $250.00 to make at least one independent expenditure advocating the election or defeat of federal candidates before the year 2000 general election and before future elections.

32. NCRL will not make contributions or independent expenditures in connection with federal elections without the consent of its officers or board members.

33. Plaintiffs Loretta Thompson, Stacy Thompson and Barbara Holt would consent to NCRL making contributions and expenditures in connection with federal elections if it were lawful for them to do so.

34. Because it would be unlawful for Plaintiffs Loretta Thompson, Stacy Thompson and Barbara Holt to consent to NCRL's making contributions and independent expenditures in connection with federal elections, they will withhold their consent and NCRL will not make contributions or independent expenditures in connection with federal elections.

35. Plaintiff Christine Beaumont believes in the sanctity of human life, including the sanctity of unborn children. In the past, Plaintiff Christine Beaumont has sought out reliable information about federal candidates and their positions.

36. Plaintiff Christine Beaumont would like to receive independent express advocacy communications regarding federal candidates from NCRL.

37. Making contributions to federal candidates and expressly advocating the election or defeat of federal candidates is not now nor will it ever be NCRL's major purpose, either as expressed in its organizational documents or as measured by its disbursements.

38. It is not now or nor will it ever be NCRL's major purpose to make contributions or expenditures on behalf of state and federal candidates combined.

D. First Amendment Protections Afforded to Non-Profit, Ideological Corporations

39. In *FEC* v. *Massachusetts Citizens for Life, Inc.*, 497 U.S. 238, 263 (1986) ("MCFL"), the Supreme Court held that "corporations that have features more akin to

voluntry political associations than business corporations should not have to bear burdens on independent spending solely because of their incorporated form." The Court then enumerated the particular characteristics of the non-profit ideological corporation in that case, which were dispositive of the Court's determination that the federal government could not restrict the non-profit, ideological corporation's First Amendment rights.

40. In *North Carolina Right to Life, Inc.* v. *Bartlett*, 168 F.3d 705, 713-715 (4th Cir. 1999) ("NCRL"), the Fourth Circuit of Appeals struck down as facially overbroad, a state statute that prohibited corporate expenditures and contributions for political purposes, because it failed to make an exception for non-profit, ideological corporations.

41. Furthermore, the Fourth Circuit agreed with the Eighth and Second Circuits that the "list of non-profit characteristics in *MCFL* was not a constitutional test for when a non-profit corporation must be exempt, but an application, in three parts, of First Amendment jurisprudence to the facts in *MCFL*." *NCRL*, 168 F.3d at 714 (citations and internal quotations omitted).

42. Most significantly, the Fourth Circuit held that the plaintiff nonprofit, ideological corporation in this case, North Carolina Right to Life, Inc., "falls squarely within the *MCFL* exception," *id.*, vis-a-vis a state statutory ban on corporate contributions and expenditures.

43. Neither NCRL's purposes nor its activities have changed in any constitutionally significant way since *NCRL* was decided.

E. <u>Unconstitutional Federal Law Restrictions on NCRL's Ability to Make Contributions and Expenditures</u>

44. According to 2 U.S.C. § 44lb(a): "It is unlawful for . . . *any corporation whatever* . . . to make a contribution or expenditure in connection with any [federal] election." (Emphasis added).

45. According to 11 C.F.R. § 114.2(b): "Any corporation whatever . . . is prohibited from making a contribution as defined in 11 C.F.R. 114.1(a) in connection with any Federal election."

46. According to 11 C.F.R. § 114.10 non-profit corporations can be exempt from the statutory ban on expenditures only if they meet all of the following criteria: (1) the corporation's "*only* express purpose is the promotion of political ideas," 11 C.F.R. § 114.10(c)(1); (2) the corporation "*cannot* engage in business activities," 11 C.F.R. § 114.10(c)(2); (3) the corporation has "[n]o persons who are offered or who receive any benefit that is a disincentive for them to disassociate themselves with the corporation on the basis of a political issue," 11 C.F.R. § 114.10(c)(3)(ii); and (4) the corporation can "demonstrate through accounting records" that it "does not directly or indirectly accept donations or anything of value from business corporations" or that it "has a written policy against accepting donations from business corporations. . . ." 11 C.F.R. § 114.10(c)(4)(ii) and (iii). (Emphasis added).

47. The Eighth Circuit Court of Appeals ruled that the FEC's regulatory attempt to codify the *MCFL* exemption in 11 C.F.R. § 114.10 is facially unconstitutional because it would "deny the *MCFL* exemption to a voluntary political association that conducts minor

business activities or accepts insignificant corporate donations." *Minnesota Concerned Citizens for Life, Inc.* v. *FEC*, 113 F.3d 129, 130 (8th Cir. 1997).

48. Additionally, the Second Circuit Court of Appeals rejected the FEC's narrow interpretation of the *MCFL* exemption and dismissed a pre-regulation enforcement action under § 441b against a non-profit, ideological corporation. "The rigidity with which the FEC would have us apply *MCFL* would impoverish political debate." *FEC* v. *Survival Education Fund, Inc.*, 65 F.3d 285, 292 (2nd Cir. 1995).

F. Threat of Enforcement

49. The Commission has initiated enforcement proceedings against alleged corporate violators of the Act in the past and there is no reason to believe that the Commission would not institute enforcement proceedings against NCRL.

50. Enforcement proceedings against North Carolina Right to Life, Inc. would have the effect of punishing it for the exercise of its rights, privileges and immunities guaranteed by the Constitution and laws of the United States.

51. Although NCRL believes that the challenged statute is unconstitutional and that the challenged regulations are unconstitutional and invalid, the threat of enforcement proceedings has a chilling effect on the First Amendment rights of NCRL, deterring it from fully and vigorously exercising its rights.

52. Additionally, section 441b provides that it is unlawful for "any officer or director of any corporation to consent to any contribution or expenditure by the corporation . . . prohibited by this section." Thus

Plaintiffs Loretta Thompson, Stacy Thompson and Barbara Holt, as officers and directors of the corporation would be personally liable for any violations.

53. The chill on Plaintiff NCRL's speech resulting from the regulation of independent expenditures in turn results in the unconstitutional infringement of Plaintiff Christine Beaumont's right to receive information and ideas from NCRL. *See Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 96 S. Ct. 1817, 1823 (1976).

54. NCRL is ready, willing, and able to make contributions to federal candidates and make independent expenditures in connection with federal elections before the year 2000 federal elections. NCRL will refrain from doing so, however, because the FEC could seek a civil penalty in an amount equal to the greater of $5,000 per violation, or the dollar value of the violation. 2 U.S.C. § 437g(a)(6)(A). Indeed, the FECA also provides criminal penalties for certain violations. 2 U.S.C. § 437g(d).

55. Immediate and irreparable injury, loss, and damage will result to the Plaintiffs by reason of the statute's and regulations' chilling effect on Plaintiff NCRL's free speech rights.

First Claim for Relief

56. Plaintiffs reallege paragraph 1 through 55.

57. NCRL intends to make contributions of less than $1,000 to federal candidates before the 2000 general election, and before future federal elections.

58. Section 441b of the FECA prohibits all corporations from making contributions in connection with a federal election.

59. Section 441b of the FECA makes no exception for non-profit, ideological corporations.

60. Plaintiffs seek a declaratory judgment that section 441b is overbroad and unconstitutional on its face. *See NCRL*, 168 F.3d at 713.

61. In the alternative, Plaintiffs seek a declaration that section 441b's prohibition of corporate contributions is unconstitutional as applied to NCRL, an *MCFL*-exempt corporation. *See NCRL*, 168 F.3d at 714.

62. Plaintiffs also seek a permanent injunction barring the FEC from enforcing the FECA against NCRL predicated on contributions to federal candidates.

Second Claim for Relief

63. Plaintiffs reallege paragraphs 1 through 55.

64. NCRL intends to make independent expenditures expressly advocating the election or defeat of federal candidates before the 2000 general election, and before future federal elections.

65. Section 441b of the FECA prohibits all corporations from making expenditures in connection with a federal election.

66. Section 441b of the FECA makes no exception for non-profit, ideological corporations.

67. Plaintiffs seek a declaratory judgment that section 441b is overbroad and unconstitutional on its face. *See NCRL*, 168 F.3d at 713.

68. In the alternative, Plaintiffs seek a declaration that section 441b's prohibition of corporate expenditures is unconstitutional as applied to NCRL, an

MCFL-exempt corporation. *See NCRL*, 168 F.3d at 714.

69. Plaintiffs also seek a permanent injunction barring the FEC from enforcing the FECA against Plaintiffs predicated on NCRL's independent expenditures expressly advocating the election or defeat of federal candidates.

Third Claim for Relief

70. Plaintiffs realleges paragraph 1 through 55.

71. NCRL intends to make contributions of less than $1,000 to federal candidates before the 2000 general election, and before future federal elections.

72. 11 C.F.R. § 114.2(b) prohibits all corporations from making contributions in connection with a federal election.

73. 11 C.F.R. § 114.2(b) makes no exception for non-profit, ideological corporations.

74. Plaintiffs seek a declaratory judgment that 11 C.F.R. § 114.2(b) is overbroad and unconstitutional on its face. *See NCRL*, 168 F.3d at 713.

75. In the alternative, Plaintiffs seek a declaration that 11 C.F.R. § 114.2(b)'s prohibition of corporate contributions is contrary to constitutional right under 5 U.S.C. § 706(2)(B), and is therefore void.

76. In the alternative, Plaintiffs seek a declaration that 11 C.F.R. § 114.2(b)s prohibition of corporate contributions is unconstitutional as applied to NCRL, an *MCFL*-exempt corporation. *See NCRL*, 168 F.3d at 714.

77. Plaintiffs also seek a permanent injunction barring the FEC from enforcing the FECA against NCRL predicated on contributions to federal candidates.

Fourth Claim for Relief

78. Plaintiffs realleges paragraphs 1 through 55.

79. In *MCFL*, the Supreme Court held that § 441b violates the First Amendment by banning nonprofit, ideological corporations from making independent expenditures.

80. The FEC's regulation at 11 C.F.R. § 114.10 purports to create a narrow exemption from the ban on corporate expenditures in 2 U.S.C. § 441b for "qualified nonprofit corporations."

81. To qualify, nonprofit corporation must have as its *only* express purpose the promotion of political ideas, it must engage in *no* business activities, must offer *no* incentives such as credit cards, insurance policies or savings plans, and must accept *no* donations from business corporations or labor unions, either directly or indirectly.

82. Plaintiff NCRL has other purposes besides promotion of political ideas; it engaged in small amounts of business activities, which are incidental to its overall purposes; and it accepts corporate contributions, although they are a relatively small percent of its total revenue. Additionally, most of the corporate contributions NCRL receives are the result of individuals who direct their phone company refunds to the nonprofit organization of their choice.

83. Even though NCRL does not qualify as an exempt corporation under 11 C.F.R. § 114.10, it

squarely falls within the Supreme Court's exception in *MCFL*, *see NCRL* 168 F.3d at 714; therefore, the federal government may not constitutionally ban it from making independent expenditures.

84. The Eighth Circuit Court of Appeals ruled that the FEC's regulatory attempt to codify the *MCFL* exemption in 11 C.F.R. § 114.10 is facially unconstitutional because it would "deny the MCFL exemption to a voluntary political association that conducts minor business activities or accepts insignificant corporate donations." *Minnesota Concerned Citizens for Life, Inc.* v. *FEC*, 113 F.3d 129, 130 (8th Cir. 1997).

85. Therefore, Plaintiffs request a declaratory judgment that 11 C.F.R. § 114.10 is, on its face, *ultra vires*, and, under 5 U.S.C. § 706, is void.

86. Plaintiffs seek a declaration that 11 C.F.R. § 114.10 is "in excess of the statutory . . . authority . . ." of the Federal Election Commission and, thus, void under 5 U.S.C. § 706.

87. Plaintiffs seek a permanent injunction barring the FEC from enforcing 11 C.F.R. § 114.10 against it.

WHEREFORE, Plaintiffs respectfully pray for:

(1) A declaratory judgment that 2 U.S.C. § 441b is overbroad and unconstitutional on its face. *See NCRL*, 168 F.3d at 713;

(2) In the alternative, a declaratory judgment that section 441b's prohibition of corporate contributions is unconstitutional as applied to NCRL, an *MCFL*-exempt corporation. *See NCRL*, 168 F.3d at 714;

(3) In the alternative, a declaratory judgment that section 441b's prohibition of corporate expenditures is

unconstitutional as applied to NCRL, an *MCFL*-exempt corporation. *See NCRL*, 168 F.3d at 714;

(4) A permanent injunction barring the FEC from enforcing the FECA against Plaintiffs predicated on contributions to federal candidates;

(5) A permanent injunction barring the FEC from enforcing the FECA against Plaintiffs predicated on NCRL's independent expenditures expressly advocating the election or defeat of federal candidates;

(6) A declaratory judgment that 11 C.F.R. § 114.2(b) is overbroad and unconstitutional on its face. *See NCRL*, 168 F.3d at 713;

(7) A declaratory judgment that 11 C.F.R. § 114.2(b)'s prohibition of corporate contributions is contrary to constitutional right under 5 U.S.C. § 706, and is therefore void;

(8) In the alternative, a declaratory judgment that 11 C.F.R. § 114.2(b)'s prohibition of corporate contributions is unconstitutional as applied to NCRL, an *MCFL*-exempt corporation. *See NCRL*, 168 F.3d at 714;

(9) A permanent injunction barring the FEC from enforcing 11 C.F.R. § 114.2(b) against Plaintiffs;

(11) A declaratory judgment that 11 C.F.R. § 114.10 is on its face contrary to constitutional right and is therefore void under 5 U.S.C. § 706;

(12) A declaratory judgment that 11 C.F.R. § 114.10 is "in excess of [the] statutory . . . authority" of the Commission as provided by the Federal Election Campaign Act of 1971, *as amended*, 2 U.S.C. § 431 *et seq.*, and, under 5 U.S.C. § 706, is void;

(13) An injunction barring the Defendants from enforcing 11 C.F.R. § 114.10;

(14) A judgment awarding Plaintiffs their costs and attorneys' fees under 28 U.S.C. § 2412;

(15) Such other and further relief as may be just and proper.

STAM, FORDHAM & DANCHI, P.A.

/s/ PAUL STAM, JR.
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BOPP, COLESON & BOSTROM

/s/ JAMES R. MASON
JAMES R. MASON
Bar No. 2838-84 (IN)
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Lead Counsel for Plaintiff

ATTORNEYS FOR PLAINTIFFS

ARTICLES OF INCORPORATION
OF
NORTH CAROLINA RIGHT TO LIFE, INCORPORATED
(Name of Corporation)

A NON-PROFIT CORPORATION

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators for the purposes of creating a non-profit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act", and the several amendments thereto, do hereby set forth:

1. The names of the corporation is North Carolina Right to Life, Incorporated

2. The period of duration of the corporation shall be perpetual

3. The purpose for which the corporation is organized are: (1) Being a non-profit, non-sectarian, public service organization dedicated to protecting and fostering the most basic value of our society-life itself; and being empowered to operate in the City of Greensboro, North Carolina, and in other cities in the State of North Carolina. We advocate positive action to improve and protect human life, and oppose whatever is destructive or detrimental to human life at any stage of development, age or condition. We are especially mindful of the unborn, the aged, the impoverished, the impaired, the incompetent, and all those otherwise weak, disadvantaged or defenseless. Our purpose is to gather and disseminate, by all means of communication, accurate up-to-date information on the subjects of abortion, euthanasia, and other life destroying techniques, and

their affects on the victim, the family, the community, and on the health care profession and society at large; and to further work for pre-life alternatives to abortion and humane solutions to the problems of women who seek abortions; said alternatives being counseling; organizing and carrying out educational programs; to foster and encourage public health programs, to assist in the placing for adoption children of all races and those with handicaps, to assist in the establishment of a comprehensive medical, social and recreational care program for unwed mothers; and to promote anti-poverty programs through job training and child care centers, specifically directed toward the family unit. (2) to make donations for the public welfare, or for religious, charitable, scientific, or educational purposes. (3) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein wherever situated. (4) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of al or any part of its property and assets.

4. The corporation is to have the following class or classes of members: (If there are to be no members, so state.) General membership, extended to any person who is in agreement with the purposes of this organization.

5. Directors of the corporations shall be elected in the following manner: As provided in the by-laws.

6. The address of the initial registered office of the corporation is a follows:

Street address, (if none, so state) 1007 North Elam Avenue

City or town Greensboro, North Carolina

County Guilford

The name of the initial registered agent of the corporation at the above address is Emma K. O'Steen

7. The number of directors constituting the initial board of directors shall be _____, and the names and addresses (including street and number, if any) of the persons who are to serve as directors until the first meeting of the corporation or until their successors are elected and qualified are:

NAME	STREET ADDRESS (If none, so state)	CITY OR TOWN
Daniel E. Horley	Route #2, Hilladale Road	Summerfield, N.C. 27358
Emma W. O'Steen	1007 North Elam Avenue	Greensboro, N.C. 27408
David G. O'Steen	1007 North Elam Avenue	Greensboro, N.C. 27408
Thomas B. Sawyer	411 South ElamAvenue	Greensboro, N.C. 27403

8. The names and addresses (including street and number, if any) of all the incorporators are:

NAME	STREET ADDRESS (If none, so stated)	CITY OR TOWN
Daniel E. Horley	Route #2, Hillsdale Road	Summerfield, N.C. 27358
Emma E. O'Steen	1007 North Elam Avenue	Greensboro, N.C. 27408
Thomas B. Sawyer	411 South Elam Avenue	Greensboro, N.C. 27403

9. In addition to the powers granted corporations under the laws of the State of North Carolina, the corporation shall have full power and authority to

10. The regulation of the internal affairs of the corporation shall be through its bylaws established by a quorum of its directors, said quorum to consist of at least one-third of its directors.

IN TESTIMONY WHEREOF, we have hereunto set our hands, this the 8th day of October, A.D. 1973.

[Illegible]
[Illegible]

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

This is to certify that on the 8th day of October, A.D. 1973, before me, a Notary Public personally appeared

Daniel E. Horley, Emma H. O'Steen, and Thomas B. Sawyer

who, I am satisfied, are the persons named in and who executed the foregoing Article of Incorporation, and I having first made known to them the contents thereof, they did each acknowledge that they signed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and official seal, this the 8th day of October, A.D. 1973.

My commission expires January 19, 1975 ROSALIE H. [ILLEGIBLE] (L.3.)

[Illegible statement]

VERIFICATION

I swear (or affirm) under the penalties for perjury under the laws of the United States that the foregoing statements concerning North Carolina Right to Life, Inc., and myself, found in this complaint are true and correct to the best of my knowledge and understanding.

Dated: this 22 day of December, 1999.

/s/ BARBARA HOLT
BARBARA HOLT, PRESIDENT
North Carolina Right to Life, Inc.

VERIFICATION

I swear (or affirm) under the penalties for perjury under the laws of the United States that the foregoing statements concerning Christine Beaumont, found in this complaint are true and correct to the best of my knowledge and understanding.

/s/ CHRISTINE BEAUMONT
CHRISTINE BEAUMONT

Dated: this 29 day of December, 1999.

VERIFICATION

I swear (or affirm) under the penalties for perjury under the laws of the United States that the foregoing statements concerning North Carolina Right to Life, Inc., and myself, found in this complaint are true and correct to the best of my knowledge and understanding.

Date: this 28th day of December, 1999.

/s/ LORETTA C. THOMPSON
LORETTA C. THOMPSON,
Vice President
North Carolina Right to Life,
Inc.

VERIFICATION

I swear (or affirm) under the penalties for perjury under the laws of the United States that the foregoing statements concerning North Carolina Right to Life, Inc. and myself, found in this complaint are true and correct to the best of my knowledge and understanding.

Date: this 28 day of December, 1999.

/s/ STACY J. THOMPSON
STACY J. THOMPSON,
Member of the Board
North Carolina Right to Life,
Inc.

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